

DETAILED ACTION

1. Claims 26, 33-36, 39-44, and 49 are pending in the application. Claims 35, 39-44, and 49 have been previously withdrawn from consideration as drawn to a non-election invention.

2. Claims 26, 33, 34, and 36 are under consideration in the instant Office Action.

3. The rejection of claims 26, 33, 34, and 36 under 35 U.S.C. 102(b) as being anticipated by Rosen et al., United States Patent Application Publication No. US 2002/0052308 has been withdrawn in view of the arguments in the claim amendment filed 08/31/2009.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 26, 33, 34 and 36 stand rejected under 35 U.S.C. 102(e) as being anticipated by Lillie et al. (United States Patent Application Publication No. US20030124128A1, filed 06/21/2002; PTO 892).

Lillie et al. teach the nucleic acid sequence of SEQ ID NO: 48 encoding SEQ ID NO: 6 of the instant application (see alignment below), and methods for screening for the presence of breast cancer comprising screening for the said nucleic acid sequence of SEQ ID NO: 48 encoding SEQ ID NO: 6 of the instant application in a subject or biological sample from said subject. Thus, the reference teachings anticipate the claimed invention.

RESULT 2
US-10-177-293-48
; Sequence 48, Application US/10177293
; Publication No. US20030124128A1
; GENERAL INFORMATION:
; APPLICANT: Lillie, James
; APPLICANT: Glatt, Karen
; APPLICANT: Zhao, Xumei
; APPLICANT: Gannavarpu, Manjula
; APPLICANT: Kamatkar, Shubhangi
; APPLICANT: Mertens, Maureen
; APPLICANT: Myer, Vic
; APPLICANT: Wang, Youzhen
; APPLICANT: Xu, Yongyao
; APPLICANT: Hoersch, Sebastian
; APPLICANT: Monahan, John
; APPLICANT: Meyers, Rachel E.
; APPLICANT: East Jr., Robert C.
; APPLICANT: Hortobagyi, Gabriel N.
; APPLICANT: Fuszta, Lajos
; APPLICANT: Meric, Funda
; APPLICANT: Sahin, Aysegul
; APPLICANT: Mills, Gordon B.
; TITLE OF INVENTION: COMPOSITIONS, KITS, AND METHODS FOR IDENTIFICATION, ASSESSMENT,
; TITLE OF INVENTION: PREVENTION, AND THERAPY OF BREAST CANCER
; FILE REFERENCE: MRI-038
; CURRENT APPLICATION NUMBER: US/10/177,293
; CURRENT FILING DATE: 2002-06-21
; PRIOR APPLICATION NUMBER: US 60/299,887
; PRIOR FILING DATE: 2001-06-21
; PRIOR APPLICATION NUMBER: US 60/301,572
; PRIOR FILING DATE: 2001-06-27
; PRIOR APPLICATION NUMBER: US 60/306,501
; PRIOR FILING DATE: 2001-07-18
; PRIOR APPLICATION NUMBER: US 60/325,002
; PRIOR FILING DATE: 2001-09-25
; PRIOR APPLICATION NUMBER: US 60/362,585
; PRIOR FILING DATE: 2002-03-05
; PRIOR APPLICATION NUMBER: US 60/xxx,xxx
; PRIOR FILING DATE: 2002-05-14
; NUMBER OF SEQ ID NOS: 506
; SOFTWARE: FastSEQ for Windows Version 4.0
; SEQ ID NO 48
; LENGTH: 1414
; TYPE: DNA
; ORGANISM: Homo sapiens
US-10-177-293-48

Alignment Scores:
Pred. No.: 7.47e-211 Length: 1414
Score: 1891.00 Matches: 359
Percent Similarity: 100.0% Conservative: 0
Best Local Similarity: 100.0% Mismatches: 0
Query Match: 100.0% Indels: 0
DB: 8 Gaps: 0

US-10-538-704-6 (1-359) x US-10-177-293-48 (1-1414)

Qy 1 MetSerThrArgAlaLysLysLeuArgArgIleTrpArgIleLeuGluGluGluSer 20
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Db	277	ATGAGCACCAGAGCCAAGAGCTGAGGAGGATCTGGAGAATTCTGGAGGAAGAGGAGAGT	336
Qy	21	ValAlaGlyAlaValGlnThrLeuLeuLeuArgSerGlnGluGlyGlyValThrSerAla	40
Db	337	GTTGCTGGAGCTGTACAGACCTCGTTCTCAGGTCCCAGGAAGGTGGCGTCACATCTGCA	396
Qy	41	AlaAlaSerThrLeuSerGluProProArgArgThrGlnGluSerArgThrArgThrArg	60
Db	397	GCGCGTGCAGTGTGTCGGAGCCTCCGGAGGAGCCAGGAGGCCGACTAGGACCAGG	456
Qy	61	AlaLeuGlyLeuProThrLeuProMetGluLysLeuAlaAlaSerThrGluProGlnGly	80
Db	457	GCCCCGGCCCTCCCCACACTCCCCATGGAGAACGTCGGCGCTCTACAGACCCCAAGGG	516
Qy	81	ProArgProValLeuGlyArgGluSerValGlnValProAspAspGlnAspPheArgSer	100
Db	517	CCTCGGGCGGTCCCTGGGGCTGAGAGTGTCCAGGTGGCGATGACCAAAGACTTTCCGAC	576
Qy	101	PheArgSerGluCysGluAlaGluValGlyTrpAsnLeuThrTyrSerArgAlaGlyVal	120
Db	577	TTCCGGTCAGAGTGTGAGGCTGAGGTGGGCTGGAACTTGACCTATAGCAGGGCTGGGTG	636
Qy	121	SerValTrpValGlnAlaValGluMetAspArgThrLeuHisIleLysCysArgMet	140
Db	637	TCTGCTGGGTGCAGGCTGTGGAGATGGATCGGACGCTGCAAGATCAAGTGGCGATG	696
Qy	141	GluCysCysAspValProAlaGluThrLeuTyrAspValLeuHisAspIleGluTyrArg	160
Db	697	GAGTGCTGTGATGTGCCAGCCAGAACACTCTACGACGTCTACAGACATTGAGTACCGC	756
Qy	161	LysLysTrpAspSerAsnValIleGluThrPheAspIleAlaArgLeuThrValAsnAla	180
Db	757	AAGAAATGGGACAGCACACGTCATTGAGACTTTGACATGCCCGTTGACAGTCACGCT	816
Qy	181	AspValGlyTyrTyrSerTrpArgCysProLeuLysAsnArgAspValIleThr	200
Db	817	GACGTGGCTATTACTCTGGAGGTGTCCAAAGCCCTGAAGAACCGTGATGTCATCAC	876
Qy	201	LeuArgSerTrpLeuProMetGlyAlaAspTyrIleIleMetAsnTyrSerValLysHis	220
Db	877	CTCCGCTCTGGCTCCCATGGGGCTGATTACATCATTATGAACACTCAGTCACACAT	936
Qy	221	ProLysTyrProProArgLysAspLeuValArgAlaValSerIleGlnThrGlyTyrLeu	240
Db	937	CCCCAAATACCCACCTGGAAAGACTTGGTCGGAGCTGTGTCCATCCAGACGGCTACCTC	996
Qy	241	IleGlnSerThrGlyProLysSerCysValIleThrTyrLeuAlaGlnValAspProLys	260
Db	997	ATCCAGAGCACAGGGCCAAGAGCTGCGTCATCACCTACCTGGCCAGGTGGACCCAAA	1056
Qy	261	GlySerLeuProLysTrpValValAsnLysSerSerGlnPheLeuAlaProLysAlaMet	280
Db	1057	GGCTCCTTACCCAAGTGGGTGGTGAATAATCTCTCAGTCTGGCTCCAAAGGCCATG	1116
Qy	281	LysLysMetTyrLysAlaCysLeuLysTyrProGluTrpLysGlnLysHisLeuProHis	300
Db	1117	AAGAAGATGTACAAGGGCTGCCTCAAGTACCCGAGTGGAAACAGAACCTGCCTCAC	1176
Qy	301	PheLysProTrpLeuHisProGluGlnSerProLeuProSerLeuAlaLeuSerGluLeu	320

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Db 1177 TTCAAGCCGTGGCTGCACCCGGAGCAGAGCCGTTGCCAGGCCCTGGCCTGTCGGAGCTG 1236
Qy 321 SerValGlnHisAlaAspSerLeuGluAsnIleAspGluSerAlaValAlaGluSerArg 340
Db 1237 TCGGTGCAGCATGCGGACTCAGTGGAGAACATCGACGAGGCGCGGTGGCCGAGAGCAGA 1296
Qy 341 GluGluArgMetGlyGlyAlaGlyGluGlySerAspAspAspThrSerLeuThr 359
Db 1297 GAGGAGCGGATGGGCGGCGGGCGAGGGCAGCGACGACGACACCTCGCTCAC 1353

Conclusion

6. No claims are allowed.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L Fronda whose telephone number is (571)272-0929. The examiner can normally be reached Monday-Thursday and alternate Fridays between 9:00AM - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat Nashed can be reached on (571)272-0934. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.
8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christian L. Fronda/

Primary Examiner

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